

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SALVADOR A. RODRIGUEZ,

Petitioner,

No. C 04-2233 PJH

v.

**ORDER SETTING BRIEFING SCHEDULE
RE: REQUEST FOR EVIDENTIARY
HEARING; REQUIRING SUBMISSION OF
SUPPLEMENTAL DOCUMENTS**

DERRAL ADAMS, Warden,

Respondent.

On March 1, 2007, this court appointed counsel for petitioner Salvador Rodriguez ("Rodriguez"), and on March 14, 2007, current counsel, Linda Fullerton, was appointed. Subsequently, on April 26, 2007, because the court determined that the pro se briefing on the only issue was inadequate, this court afforded Fullerton, on Rodriguez's behalf, the opportunity to file a supplemental traverse and also to request an evidentiary hearing. After numerous continuances, Rodriguez filed his supplemental traverse and request for evidentiary hearing on September 17, 2007.

Rodriguez attempts to expand the issue before this court in the supplemental traverse beyond the scope of that in his petition and in this court's numerous orders to date. In his sole surviving claim, Rodriguez had contended that he received ineffective assistance of counsel based on his trial counsel's failure to assign an investigator to investigate the facts of his case, a claim which has been detailed in letters in the file from a former investigator, William Walter Foskett. However, in his supplemental traverse, Rodriguez now additionally argues that trial counsel's failure to present evidence at trial (witnesses that had indeed been interviewed) also constituted ineffective assistance of

1 counsel.

2 In attempting to determine whether the issue, as framed by Rodriguez in his
3 supplemental traverse, was raised before the state appellate courts in Rodriguez's state
4 habeas petition, the court became aware that respondent failed to include the actual order
5 from the California Court of Appeal with the lodged exhibits. Instead, respondent included
6 only a copy of the appellate court's docket reflecting that an order had been issued. See
7 Exh. 9. It is necessary for this court's record to include the appellate court's February 13,
8 2003 order itself. It is also necessary for this court to review Rodriguez's February 7, 2003
9 state habeas petition to ascertain whether he exhausted the claim as currently presented in
10 his supplemental traverse.

11 Accordingly, respondent is ORDERED to file and serve a response to Rodriguez's
12 request for an evidentiary hearing **no later than fourteen days** from the date of this order.
13 In addition to the response, respondent is ORDERED to submit copies of the California
14 Court of Appeal's February 13, 2003 order denying Rodriguez's habeas petition, and his
15 February 7, 2003 habeas petition.

16 Rodriguez may file and serve a reply with respect to his request for an evidentiary
17 hearing **no later than twenty-one days** from the date of this order.

18 **IT IS SO ORDERED.**

19 Dated: September 27, 2007



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21 PHYLLIS J. HAMILTON
22 United States District Judge
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